IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 168 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VISHWAMITRIGIRI - Appellant(s)
Versus
DASHRATHLAL SHIVLAL & 1 - Defendant(s)

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Appearance :

MR SI NANAVATI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.3.1
MR SM BHATT for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/08/2006

ORAL JUDGMENT

1.The present appeal has been filed by the appellants herein - original plaintiffs (hereinafter referred to as “the plaintiffs”) challenging the judgment

and decree passed by the learned City Civil Court, Ahmedabad, dated 30th April, 1979 passed in Civil Suit No. 3133 of 1975, by which, the learned trial Court has decreed the suit in favour of the plaintiffs so far as it relates to the properties situated outside the Khadaki only. The plaintiffs filed Civil Suit No. 3133 of 1975 in the City Civil Court, Ahmedabad, against the respondents herein - original defendants (hereinafter referred to as “the defendants) for the perpetual injunction restraining the defendants from preventing the Bavas from performing the Seva- Puja in the temple and for restraining the defendants from preventing the followers of the trust, while going to the temple for offering prayers and also for restraining them from preventing the servants of the trust from collecting the rent from the tenants. It is required to be noted that the respondents herein - original defendants had also filed one Civil Suit No, 268 of 1975 before the City Civil Court, Ahmedabad, which was heard and decided and disposed of along with the Civil Suit

No. 3133 of 1975 praying for a perpetual injunction restraining the defendants from directly or indirectly snatching away the possession of the disputed properties without recourse due process of law, and also restraining them from entering upon the properties and from interfering with the possession and enjoyment of the said properties. It is required to be noted that so far as the Civil Suit No. 268 of 1975 filed by the respondents herein is concerned, the learned trial Judge decreed the said suit against the appellants in so far as it relates to properties situated inside the Khadki and appellants herein are restrained from collecting any rent or taking over the possession from the tenants in respect of the said properties and the suit of the respondents in respect of properties situated outside the Khadki was ordered to be dismissed. It is required to be noted that so far as the judgment and decree passed by the learned City Civil Court, Ahmedabad, in Civil Suit No. 268 of 1975 to the extent stated above is concerned, the same has not been challenged by the

appellants and same has become final. Under the circumstances, so far as the dispute with regard to the properties situated inside the Khadki is concerned, the decree passed by the learned trial Court has not been challenged and the same has become final. So far as the rest of the properties, more particularly, outside the Khadki is concerned, the learned trial Court has already passed a decree in favour of the appellants in Civil Suit No. 3133 of 1975, which is not challenged by the respondents herein. Under the circumstances, so far as the challenge to the judgment and decree passed by the learned trial Court passed in Civil Suit No. 3133 of 1975 in so far as not passing any decree in favour of the appellants with respect of properties situated inside the Khadki is concerned, it is not open for the appellants to challenge the same now as the judgment and decree passed in Civil Suit No, 268 of 1975 has not been challenged by the appellants.

2.Even otherwise, on going through the judgment and

order passed by this Court in First Appeal No. 622 of 1966 dated 23/26 November, 1973 which is reproduced in the impugned judgment and decree, the learned Single Judge of this Court has already held that so far as the properties situated inside the Khadki is concerned, it is not a trust properties and the said judgment in First Appeal has been confirmed by the Letters Patent Appeal Bench of this Court and the dispute with regard to the rest of the properties i.e. holding the properties outside the Khadki to be the trust properties, respondents have approached the Hon'ble Supreme Court. Under the circumstances, so far as the properties within the Khadki is concerned, this Court has already held in the aforesaid First Appeal that the properties situated within the Khadki is concerned, it is not a trust properties. Considering the above, the learned trial Court has not committed any error in partly allowing the Civil Suit No. 3313 of 1975 only qua the properties outside the Khadki is concerned. Even otherwise, as stated above, by not challenging the judgment and

decree passed by the learned City Civil Court, Ahmedabad, passed in Civil Suit No. 268 of 1975, it is not open for the appellants to contend the other way round.

3. Under the circumstance and for the reasons stated above, the appeal is required to be dismissed and is accordingly dismissed. However, there shall be no order as to costs. Ad-interim relief, if any, stands vacated forthwith.

(M.R.SHAH,J.)

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